

Office of the Presiding Officer
Military Commission

September 7, 2005

This document has been approved by both the Presiding Officer as a Presiding Officer Memorandum, and by the Chief Clerk for Military Commissions in the form he deems appropriate.

Presiding Officers Memorandum (POM) # 11: Qualifications of Translators / Interpreters and Detecting Possible Errors or Incorrect Translation / Interpretation during Commission Trials

1. Translators/interpreters (hereafter translators) are present during Commission trial sessions to provide simultaneous translation for those participants who do not understand the language being used by the person speaking (Commission translators.) Additionally, the defense has been provided a translator to assist counsel in communicating with their clients (defense translators.) Despite these measures, there is always the possibility of an incorrect translation. While there may be disagreement among expert translators on the precise translation of a particular phrase or idiom, some translation errors may be significant enough to jeopardize the Commission's responsibility to provide an accused a full and fair trial. If significant translation errors are reported immediately, the mistake can be corrected in time to insure the fairness of the proceedings and the accuracy of the record of proceedings. This POM is designed to insure that:

- a. The qualifications of Commission translators are made known to all parties before they perform translation duties;
- b. Significant translation errors are identified as soon as possible so that counsel may bring them to the attention of the Presiding Officer and obtain relief, where warranted;
- c. Participants know of the need to report significant translation errors; and,
- d. The defense and prosecution are aware that a failure to report significant translation errors in a timely manner can result in waiver.

2. Obtaining Commission translators. Neither the Presiding Officer nor the Commission has the authority to procure translators. The Chief Clerk for Military Commissions (CCMC) is responsible for obtaining Commission translators on behalf of the Appointing Authority. The Chief Defense Counsel and detailed defense counsel are responsible for coordinating with the CCMC to arrange for qualified defense translators.

3. Curriculum vitae of Commission translators. In all Commission trial sessions in which a Commission translator is used, the CCMC will obtain a written *curriculum vitae* of all proposed Commission translators and provide the same to the Presiding Officer, the Assistant, and all counsel, not less than seven days before the first day of the session in which the Commission translator will be used. If any counsel has any objection to the qualifications of any Commission translator, they will provide that objection, and the basis for it in writing (email), to the CCMC, the Assistant, the Presiding Officer, and opposing counsel within 24 hours of receiving the *curriculum vitae*. During any Commission trial session in which a Commission translator is used, the detailed prosecutor is responsible for ensuring that the *curriculum vitae* of any Commission translators is marked as a Review Exhibit, and that the record reflects any changes in Commission translators.

4. Timely reporting of significant translation errors.

a. If any “participant to a Military Commission” has “any reason to suspect” that there has been a “significant translation error” made by a Commission translator, that participant will notify the Presiding Officer, the Assistant, the CCMC, and opposing counsel using the procedures and time frames established in paragraph 5.

b. “Participant to a Military Commission” means any Commission translator, any defense translator, any counsel detailed to the Commission, any civilian counsel for an accused at a session, the Presiding Officer, any Commission member, or any court reporter.

c. “Reason to suspect” means information that would lead a participant to suspect that a significant translation error occurred. The error may be personally known to the participant, or may have been learned through any other source or by any other means.

d. “Significant translation error” means an error made by a Commission translator that may affect:

- (1) The correctness of a ruling on a motion or other request for relief;
- (2) The rights of any party to the proceeding;
- (3) The correctness of the verdict or sentence; or,
- (4) The provision of a full and fair trial.

e. If a counsel, who is a participant as previously defined: (1) has reason to suspect that a significant translation error has occurred, and, (2) fails to make that reason and suspicion known to the Presiding Officer using the procedures and time frames established in paragraph 5, that failure will be considered in deciding whether the counsel, and the party the counsel represents, has waived the error.

5. How suspected significant translation errors are to be reported.

- a. If discovered during a Commission trial session, the suspected error will be made known immediately -- interrupting the session to do so if necessary.
- b. If discovered after a trial session has concluded, but before the parties have left Guantanamo, the suspected error will be immediately reported to the PO, the Assistant to the Presiding Officer, the CCMC, and opposing counsel in person.
- c. If the error is not discovered by a counsel until only after receipt of a draft session transcript as that term is used in POM # 12, the procedures in POM # 12 will be used to document the error.
- d. If the error is discovered at any other time, the notification will be made to the Presiding Officer, the Assistant, and the CCMC by the most expeditious means possible, and also by email, as soon as it is known.

6. Translation verification procedure.

- a. This procedure will only be used when directed by the Presiding Officer.
- b. When implemented by the Presiding Officer, the translation verification procedure will operate as below:
 - (1) The Presiding Officer will provide the report of the alleged error to the CCMC, all counsel on the case, and the court reporter for the session in question. The Presiding Officer will also direct which alleged errors shall be subject to the translation verification procedure.
 - (2) The court reporter for the session in question will provide the CCMC with a copy of the audio file for the session in question along with a transcript of the relevant portions of the record of trial.
 - (3) The CCMC shall obtain the services of a qualified translator. The translator may be a government employee, contractor, or other qualified person.
 - (4) The verification translator obtained per paragraph 6b(3) above will compare the audio recording and the transcript and note in writing any other-than-minor, insignificant errors in the matters specified by the Presiding Officer per paragraph 6b(1) above, and provide what is believed to be the correct translation. This work will be performed as quickly as possible and the results provided to the CCMC.
 - (5) The CCMC shall serve the writing prepared in accordance with paragraph 6b(4) above to the Presiding Officer, the Assistant, counsel for the case, and the Appointing Authority as soon as it is received.

(6) Within ten days of receiving the writing prepared in paragraph 6b(5) above, any counsel who wishes relief shall request it in writing to the Presiding Officer, with a copy to the Assistant, the CCMC and opposing counsel, noting what they believe to be a significant translation error, why it is a significant translation error, and how the error shall be corrected. A copy of the audio recording may be made available to the counsel to assist them in any submission.

(7) If, after receiving a writing per paragraph 6b(6) above, opposing counsel believes that there was not a significant translation error, that counsel shall provide such comment within 5 days of receiving the writing described in paragraph 6b(6) above to the Presiding Officer, the Assistant, the CCMC, and opposing counsel. Failure to provide such an answer, however, does not indicate that a significant translation error did occur.

(8) The Presiding Officer will determine the method by which conflicting views are resolved when such conflicts are brought to its attention.

7. Translation verification procedure for sessions held before the effective date of this POM.

a. If any counsel has reason to suspect there has been a significant translation error made during the sessions held in August 2004, they shall follow the procedures in paragraph 5 not later than 10 days from the effective date of this POM.

b. Translation verification procedure for sessions held in November 2004. During the processing of the transcripts for the November 2004 sessions in accordance with POM #13, the presiding officer directed counsel to note significant translation errors. None were noted by any counsel. Notwithstanding, for the November 2004 sessions, if counsel are aware of any significant translation error, they shall also follow the procedures in paragraph 5c not later than 10 days from the effective date of this POM.

c. The Presiding Officer may direct use of the procedures in paragraph 6.

8. Other instructions:

a. This POM does not relieve any person from their duty to adhere to Commission Law, Federal and other laws and regulations concerning the handling, marking, dissemination, and storage of classified or protected information.

b. With respect to any audio recording of Commission proceeding, whether such recording contains classified or protected information or not, no person shall, with respect to a portion of an audio recording of a Commission proceeding, do any of the following unless directed or permitted by the Presiding Officer or the CCMC:

(1) Copy any portion of the audio recordings. Copying includes electronic, optical, or magnetic copying, transmitting, or moving data from one media to another. Examples of copying include, but are not limited to, placing any portion of the data onto

a network or the Internet, sending the file as an email attachment, or placing, copying, or moving any portion of the data onto any media (CD/DVD/floppy disk/USB storage device etc.)

(2) Permit or request another to make a copy - as that term is used above - of the audio recording or move any portion of the data.

(3) Request another to listen to, or permit another to listen to, any audio recording except for those persons identified in this POM as authorized to receive or listen to the recording.

c. Court reporters may make copies of audio recordings of Commission session as are necessary to perform their duties or in compliance with this POM.

d. Anyone with knowledge of a violation of paragraph 8(b) above, whether the violation was allegedly intentional or inadvertent, shall report it as soon as possible to the Presiding Officer and the CCMC.

Approved by:

Peter E. Brownback III
COL, JA, USA
Presiding Officer

M. Harvey
Chief Clerk for Military Commissions